

**ORDINANCE NO. 49-092**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION SALES TAX BONDS, SERIES 2011A, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED \$9,025,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE CONSTRUCTION OF ROADS, HIGHWAYS AND BRIDGES IN THE CITY; PLEDGING A PORTION OF THE COUNTY RETAILER'S SALES TAX REVENUES ALLOCATED TO THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS AS THEY BECOME DUE; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF ANY PORTION OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS NOT PAID FROM SAID SALES TAX REVENUES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.**

**WHEREAS**, the City of Wichita, Kansas (the "City") is a city of the first class duly created, organized and existing under the laws of the State of Kansas (the "State"); and

**WHEREAS**, the City is authorized under the laws of the State to issue general obligation bonds to construct roads, highways and bridges in the City; and

**WHEREAS**, the City is the recipient of funds derived from a county-wide retailer's sales tax in Sedgwick County, Kansas, pursuant to K.S.A. 12-187 *et seq.*, and is authorized under K.S.A. 12-195b to issue general obligation bonds for the payment of the costs of public facilities or improvements and to pledge the revenues received by the City from a county-wide retailer's sales tax for the payment of such general obligation bonds; and

**WHEREAS**, the Governing Body of the City has heretofore adopted Ordinance No. 41-815 pledging one-half of the revenues received by the City from the county-wide retailer's sales tax for the purpose of financing the construction of roads, highways and bridges in the City (such portion of the sales tax revenue, plus investment earnings thereon, except for investment earnings required to be paid United States Treasury to meet the rebate requirements of Section 148(f) of the Code, are referred to herein as the "Pledged Revenue" as more fully defined in the hereinafter defined Bond Resolution); and

**WHEREAS**, on July 12, 2011, the Governing Body of the City adopted Resolution No. 11-163 (the "Sales Tax Pledge Resolution"), finding and determining it to be necessary to finance the costs of constructing roads, highways and bridges in the City through the issuance of general obligation bonds under the authority of K.S.A. 12-195b, and to pledge 50% of the revenues received by the City from the county-wide retailer's sales tax for the payment of such general obligation bonds; and

**WHEREAS**, the Sales Tax Pledge Resolution was duly published in the City's official newspaper once each week for 2 consecutive weeks, on July 15, 2011, and July 22, 2011, as required by law, and within the 30 day period following the last said publication date, no sufficient written petition to contest the proposed issuance of such general obligation bonds and the pledging of a portion of the sales tax revenues to the payment thereof was filed with the Sedgwick County, Kansas Commissioner of Elections; and

**WHEREAS**, the Governing Body of the City has heretofore issued the following general obligation bonds and has pledged the Pledged Revenue to pay the principal of and interest on such bonds:

- (a) General Obligation Refunding and Sales Tax Bonds, Series 2003B (the "Series 2003B Bonds"), issued in the original amount of \$48,855,000;
- (b) General Obligation Sales Tax Bonds, Series 2007 (the "Series 2007 Bonds"), issued in the original amount of \$40,500,000;
- (c) General Obligation Sales Tax Refunding Bonds, Series 2009A (the "Series 2009A Bonds"), issued in the original amount of \$28,385,000;
- (d) General Obligation Sales Tax Refunding Bonds, Series 2010A (the "Series 2010A Bonds"), issued in the original amount of \$21,420,000; and

**WHEREAS**, the Governing Body intends to further consider on this date the authorization to issue the City's General Obligation Sales Tax Refunding Bonds, Series 2011B (the "Series 2011B Bonds"), issued in the original amount not to exceed \$18,500,000; and

**WHEREAS**, the ordinances and resolutions of the City authorizing the issuance of the Series 2003B Bonds, the Series 2007 Bonds, the Series 2009A Bonds, the Series 2010A Bonds and the Series 2011B Bonds (collectively, the "Outstanding Bond Ordinances") authorize or will authorize the issuance of additional general obligation bonds which may be on a parity with and co-equal in stature and priority to the lien of the Series 2003B Bonds, the Series 2007 Bonds, the Series 2009A Bonds, the Series 2010A Bonds and the Series 2011B Bonds (collectively, the "Outstanding Parity Bonds") on such portion of the revenues from the sales tax, if certain conditions are satisfied; and

**WHEREAS**, the Governing Body hereby finds and determines that the conditions and requirements of the Outstanding Bond Ordinances precedent to the issuance of additional revenue bonds on a parity with and co-equal to the Outstanding Parity Bonds have been or shall be, prior to or on the Date of Issuance, met; and

**WHEREAS**, the Governing Body, pursuant to Resolution No. R-11-208, duly adopted August 23, 2011, advertised for bids at a public sale for an approximate amount of not to exceed \$9,025,000 of the City's General Obligation Sales Tax Bonds, Series 2011A (the "Bonds"); and such public sale has been duly held and the Governing Body has awarded the Bonds to the lowest bidder therefor; and

**WHEREAS**, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-077, establishing a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12, and said ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Bonds authorized hereby as though fully set forth herein; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Bonds, to prescribe the terms and details thereof, to pledge a portion of the revenues allocated to the City from the county-wide retailer's sales tax to the payment of the principal of and the interest on the Bonds on a parity with and co-equal to the pledge of such revenues to payment of the Outstanding Parity Bonds, to provide for the levy and collection of an annual tax in order to provide for the payment of any portion of the principal of and the interest on the Bonds not paid from the sales tax revenues, and to make certain other covenants and agreements with respect thereto;

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:**

**Section 1. Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Bond Resolution herein referenced.

**Section 2. Authorization and Security of the Bonds.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to pay the Project Costs, the Bonds in the aggregate principal amount of \$9,025,000 shall be issued. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Governing Body hereby covenants and agrees to make provision for the payment of the principal of, premium, if any, and the interest on the Bonds as and when the same becomes due and payable from the Pledged Revenues; and, if not so paid, from ad valorem taxes levied upon all of the taxable tangible property located within the territorial limits of the City in such amounts, if any, as are necessary to pay any portion of the principal and interest on the Bonds not paid from the Pledged Revenues. The Bonds shall be and constitute valid and legally binding general obligations of the City; and the full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

**Section 3. Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Bonds, the City will comply with the

provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

**Section 4. Pledge of Pledged Revenues.** The principal of, premium, if any, and the interest on the Bonds is secured by and payable first from a first and prior lien on and an irrevocable pledge of the Pledged Revenues, which lien shall be on a parity with and co-equal to the lien of the Outstanding Parity Bonds on the Pledged Revenues; and the City hereby irrevocably pledges the Pledged Revenues solely and only to the payment of the principal of, premium, if any, and the interest on the Outstanding Parity Bonds and the Bonds. The pledge of the Pledged Revenues shall be valid and binding from and after the effective date of this Ordinance, and such Pledged Revenues so pledged and hereafter received by the City shall immediately be subject to the lien of such pledge without the physical delivery of such Pledged Revenues or any further action on the part of the City, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind against the City, irrespective of whether such parties have notice hereof.

The Bonds shall have no priority with respect to the payment of principal or interest over any general obligation bonds of the City hereafter issued in accordance with the provisions of this Ordinance and the Bond Resolution which are on a parity with the Bonds, nor shall any other general obligation bonds of the City heretofore or hereafter issued have priority over the payment from the Pledged Revenues of the principal of or the interest on the Bonds. The Bonds are, however, on a parity with and co-equal to the Outstanding Parity Bonds respecting payment of the principal amount thereof and the interest thereon.

**Section 5. Covenant to Collect Sales Tax.** The City hereby covenants that, to the extent of its control, it will cause the Sales Tax to be maintained and collected as provided by the Act in order to generate Pledged Revenues sufficient to pay the principal of, premium, if any, and the interest on the Outstanding Parity Bonds and the Bonds, as and when the same shall become due and payable. The City hereby further covenants that it will take no action of any kind which would in any manner impair or delay the collection of the Sales Tax or which might otherwise adversely affect the Pledged Revenues, and in the event any litigation, claim or proceeding shall be commenced in any form or tribunal under which the Sales Tax may be challenged or the pledge of the Pledged Revenues pursuant to this Ordinance or the Bond Resolution, or which in any other way may adversely affect the collection of the Pledged Revenues by the City sufficient to pay the principal of, premium, if any, and the interest on the Outstanding Parity Bonds and the Bonds, the City shall take all action necessary to contest any such litigation or proceeding to the extent the City has standing to contest such litigation or proceedings and is otherwise permitted by law to take such action.

**Section 6. Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code; and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds; and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance, any rebate as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 7. Designation of Paying Agent and Bond Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds following written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

**Section 8. Further Authority.** The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds, and the Bonds. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof; and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to

and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval and completeness of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

**Section 9. Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper; provided; however that all references to the Series 2011B Bonds shall only become effective upon the issuance and delivery of the Series 2011B Bonds by the City.

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**PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on  
September 20, 2011.**

(Seal)

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Carl Brewer, Mayor

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Karen Sublett, City Clerk

APPROVED AS TO FORM:

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Gary E. Rebenstorf, Director of Law